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No. 87-1370

IN THE UNITED STATES SUPREME COURT OCTOBER TERM, 1987

N. W. ENTERPRISES, INC.,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition For Writ Of Certiorari To The Texas Court Of Appeals For The Fourteenth Supreme Judicial District At Houston, Texas

RESPONDENT'S BRIEF IN OPPOSITION

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25pp

QUESTIONS PRESENTED

I. Did the Court of Appeals err in holding that the trial court correctly charged the jury on the prurient appeal requirement necessary to support an obscenity conviction and that the evidence was sufficient to support a conviction thereunder?

II. Was the trial court's charge constitutionally infirm because it did not instruct the jury to determine whether the corporate defendant itself possessed the requisite specific intent necessary for an offense of promoting obscenity?

III. Was there probable cause to support the issuance of the search warrant pursuant to which obscene material was seized and admitted into evidence at trial?

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent[1] herein, by and through its attorney, the Attorney General of Texas, and files this Brief in Opposition.

OPINION BELOW

The opinion of the Fourteenth Court of Appeals of Texas filed January 9, 1986, is unpublished, but is

[1]For clarity, the Respondent is referred to as "the state," and Petitioner as "N. W. Enterprises."

reproduced as Appendix C to the Petition for Writ of Certiorari. *N. W. Enterprises v. State*, No. C14-84-533-CR. The Texas Court of Criminal Appeals refused N. W. Enterprises' Petition for Discretionary Review on January 28, 1987, and denied its Motion for Rehearing on November 12, 1987.

JURISDICTION

N. W. Enterprises seeks to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

N. W. Enterprises' claims are based on the first, fourth and fourteenth amendments to the United States Constitution. Also involved herein are Sections 1.07, 6.03, 7.22, 43.21, and 43.23 of the Texas Penal Code.

STATEMENT OF THE CASE

On March 11, 1982, N. W. Enterprises was charged by information with promoting obscene material by exhibiting a film entitled "Shivaree." N. W. Enterprises pled not guilty but was nevertheless convicted of the misdemeanor offense of promoting obscene material. The court assessed punishment of a fine of ten thousand dollars.

On direct appeal, N. W. Enterprises argued substantially the same points of error which it now advances in its petition for writ of certiorari. The Fourteenth Court of Appeals of Texas rejected N. W. Enterprises' claims and affirmed the judgment of the trial court. *N. W. Enterprises v. State*, No. C14-84-533-CR (Tex.App.--Houston [14th Dist.] January 9,

1986, pet. ref'd). The Texas Court of Criminal Appeals refused N. W. Enterprises' Petition for Discretionary Review and Motion for Rehearing.

STATEMENT OF FACTS

The facts of the offense are adequately set forth in the opinion of the Texas Court of Appeals. *See* Appendix C to the petition at 1-2, 6.

SUMMARY OF ARGUMENT

N. W. Enterprises' claimed constitutional errors are without merit. The trial court instructed the jury that it could find that the obscene film exhibited by N. W. Enterprises appealed to the prurient interest in sex of either the homosexual community or the average member of the community. This Court has never imposed an absolute requirement that where obscene material is directed at a specific group, the prurient interest requirement necessary for a finding of obscenity must be adjudged only with reference to that specific group. On the contrary, this Court has approved instructions on prurient appeal to deviant sexual groups as a part of an instruction pertaining to appeal to an average person when the evidence, such as here, would warrant such an instruction. While this Court has specifically reserved judgment on whether in cases involving "bizarre" sexual deviant groups the prurient appeal requirement should be adjudged solely from the vantage point of the particular group, this case is not a proper one for the Court's consideration of that question. The material in this case deals solely with homosexual intercourse and sodomy. This Court's previous opinions aptly demonstrate that homosexuals are not such a deviant sexual group that the average jury would be unable to determine what appeals to homosexuals' prurient interest in sex by considering their own experiences of what appeals to homosexuals.

The jury charge of which N. W. Enterprises complains actually accorded with the requirements of due process because it did not relieve the state of its burden of proving all the elements of the offense charged beyond a reasonable doubt. Therefore, the mere fact that N. W. Enterprises did not receive the charge it requested is not worthy of this Court's attention because criminal procedure in state courts is best left to the states unless it offends a fundamental principle of justice.

Finally, the seizure of materials presumptively protected by the first amendment is to be evaluated under the same standard of probable cause used to review warrant applications in general. Under this standard, there is little doubt but that the search warrant used to seize the obscene material from N. W. Enterprises' premises was supported by probable cause to believe that the material was obscene under Texas law. Therefore, the material was properly admitted into evidence at trial.

REASONS FOR DENYING THE WRIT

I.

THE QUESTIONS PRESENTED FOR REVIEW ARE UNWORTHY OF THIS COURT'S ATTENTION.

Rule 17 of the Rules of the Supreme Court provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. N. W. Enterprises has advanced no special or important reason in this case, and none exists. Moreover, this case presents only the question whether well settled constitutional principles were

correctly applied in this case. Thus, no important question of law is presented.

II.

THE STATE ESTABLISHED THE PRURIENT APPEAL REQUIREMENT NECESSARY TO SUPPORT A FINDING OF OBSCENITY.

A. The trial court correctly defined the standard for determining whether material appeals to a prurient interest in sex.

It is well settled that obscene material is not protected by the first or fourteenth amendments as a limitation on the state police power. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973); *Miller v. California*, 413 U.S. 15 (1973). In *Miller*, the Court established a tripartite test for judging the constitutionality of convictions under state statutes designed to regulate obscene materials. In order to sustain a conviction under such a statute, the jury must find that: (a) the average person, applying contemporary community standards would find that the allegedly obscene material, taken as a whole, appeals to a prurient interest in sex, (b) the allegedly obscene material depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) the allegedly obscene material, taken as a whole, lacks serious literary, artistic, political or scientific value. *Miller*, 413 U.S. at 24. Pursuant to this constitutional mandate, the Texas Legislature enacted Tex. Penal Code Ann. §§ 43.21, 43.23 (Vernon Supp. 1988), under which N. W. Enterprises was convicted of promoting obscenity.

The focus here is upon the first branch of the three-part test. N. W. Enterprises does not dispute that "Shivaree" depicted sexual conduct defined by Section 43.21 or that the film lacked serious literary, artistic, political or scientific value. Rather, N. W. Enterprises contends that under *Mishkin v. New York*, 383 U.S. 502 (1966), the state's evidence was insufficient to prove that "Shivaree" appealed to a prurient interest in sex. N. W. Enterprises' position is based on an erroneous interpretation of *Mishkin*.

In *Mishkin*, the state prosecuted the defendant for promoting obscenity because he had published some books depicting various deviant sexual practices including flagellation, fetishism, and lesbianism. The defendant contended that these books could not satisfy the prurient appeal requirement because they did not appeal to a prurient interest of the "average person" in sex; instead of stimulating the erotic, they disgusted and sickened the viewer. *Id.* at 508. The Court rejected this argument as based on an unrealistic interpretation of the prurient appeal requirement:

> Where the material is designed for and primarily disseminated to a clearly defined deviant sexual group, rather than the public at large, the prurient appeal requirement of the *Roth [v. United States*, 354 U.S. 476 (1948)] test is satisfied if the dominant theme of the material taken as a whole appeals to the prurient interest in sex of the members of that group. The reference to the "average" or "normal" person in Roth . . . does not foreclose this holding. . . . We adjust the prurient-appeal requirement to the social realities by *permitting* the appeal of this type of material to be assessed in terms of the

> sexual interest of its intended and probable recipient group. . . .[2]

Id. at 508-09 (footnotes omitted, emphasis added). Thus, quite apart from limiting the prurient appeal requirement as N. W. Enterprises suggests, *Mishkin* in fact expanded the prurient appeal requirement. Further, *Mishkin* did not impose an iron-clad rule that where particular material was created for a clearly defined group, the trial court could only instruct the jury to consider whether the material appealed to that defined group's prurient interest in sex. On the contrary, *Mishkin* merely permits the trial court to so instruct the jury. Further, *Mishkin* did not delineate any guidelines for determining what constitutes a deviant sexual group for purposes of this broader instruction.

The state concedes that "Shivaree" was primarily produced for and directed at a homosexual audience; however, this fact did not foreclose the use of the trial court's conditional definition of the prurient appeal requirement in its jury charge.[3] This Court has never

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[2]*Mishkin* was decided under the *Roth* standard of obscenity. In *Miller*, this Court altered the *Roth* standard by rejecting a national standards test in favor of the community standard of obscenity and adopting an actual local community test. *Miller*, however, seemingly left the *Mishkin* reference to the prurient-appeal requirement intact.

[3]The trial court instructed the jury that:

> "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designated for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

held that when allegedly obscene material is primarily directed at a specific group, the prurient appeal requirement must be adjudged only with reference to that group. The crux of *Mishkin* was that where the materials were directed at such a bizarre deviant group that the experience of the jury would be plainly inadequate to judge whether the materials appealed to a prurient interest, the jury *could* determine prurient interest appeal from the standpoint of the intended recipient group. Indeed, this Court has recognized that "[n]othing prevents a court from giving an instruction on prurient appeal to deviant sexual groups *as part of* an instruction pertaining to appeal to the average when the evidence, as here, would support such a charge." *Pinkus v. United States*, 436 U.S. 293, 302 (1978) (emphasis added); *see also Hamling v. United States*, 418 U.S. 87, 128-30 (1974) (where materials might appeal to the prurient interest of a group beyond the comprehension of the average person, the jury was properly instructed that in determining the existence of prurient appeal, it should measure the prurient appeal to all groups).

N. W. Enterprises apparently interprets *Mishkin* as requiring that the prurient appeal requirement be adjudged only from the standpoint of a specific group when materials are directed primarily at that group. Accordingly, N. W. Enterprises implies that to support a conviction, the prosecution had to produce evidence to guide the jury in its deliberations because jurors cannot be presumed to know the reaction of the homosexual community to "Shivaree" as they would that of the average person. This Court has explicitly reserved judgment on the evidentiary and instructional requirements in a case where "the contested materials are directed at such a bizarre deviant group that the experience of the trier of fact would be plainly inadequate to judge whether the material appeals to

the prurient interest." *Pinkus*, 436 U.S. at 303; *Paris Adult Theatre I*, 413 U.S. at 56 n.6. The Court need not render judgment on these issues in this case because the intended recipient group, homosexuals, is not such a bizarre deviant group that the average juror could not determine whether "Shivaree" appealed to that group's prurient interest in sex.

Homosexuals represent an ever-expanding segment of our society. It is true that in *Mishkin* some of the materials supporting an instruction on the prurient interest of deviant sexual groups depicted lesbian activity. No court, however, has ever held that homosexuals are *per se* a deviant sexual group beyond the comprehension of the average juror. In *Mishkin*, the materials involved not only lesbianism, but also flagellation and fetishism. This case involves only depiction of homosexual intercourse and sodomy. It does not involve such deviant sexual practices as bondage or bestiality, which would almost certainly disgust and sicken most normal persons. *See United States v. Petrov*, 747 F.2d 824 (2d Cir. 1984), *cert. denied*, 471 U.S. 1025 (1985) (such activity would not appeal to the average person's prurient interest so that the government was required to establish the existence of a deviant group to whom such material appeals, and that the material at issue would appeal to such a group).

While homosexual conduct may be reprehensible to some members of society, it is nonetheless true that, given the prevalence of homosexuality, it cannot be equated with bondage and bestiality or be said that the average person could not fathom the prurient appeal evoked by "Shivaree." Moreover, *Kaplan v. California*, 413 U.S. 115 (1973), involved materials depicting both heterosexual and homosexual conduct. The Court held that once the prosecution introduced the obscene material itself into evidence, the state need not present

any further evidence on the issue of whether the material was obscene. *Id.* at 121. The obvious implication was that the jury was capable of assessing whether both the heterosexual and homosexual activity appealed to a prurient interest in sex and that a "deviant group" instruction was not required for the homosexual material. Thus, this is not a proper case for the Court to consider the specific question reserved for judgment in *Pinkus* and *Paris Adult Theatre I.*

B. *The evidence was sufficient to justify the finding that the material appealed to a prurient interest in sex under the court's instruction.*

Whether or not certain material appeals to a prurient interest is a question of fact. *Smith v. United States*, 431 U.S. 291, 301 (1977). Because the prurient appeal of "Shivaree" was not beyond the average juror's comprehension, the state was not required to introduce any further evidence on obscenity once "Shivaree" had been shown to the jury because the film itself was the best evidence of what it represented. *Pinkus*, 436 U.S. at 302; *Kaplan*, 413 U.S. at 121; *Paris Adult Theatre I*, 413 U.S. at 56. While N. W. Enterprises introduced evidence tending to show that "Shivaree" did not appeal to the prurient interest in sex of homosexuals, such fact is of no consequence. First, this testimony did nothing to disprove that "Shivaree" appealed to the prurient interest of the average person, and it was permissible for the jury to base a finding of obscenity on such an existing prurient appeal. Secondly, the jury was not bound to accept the opinion of any of N. W. Enterprises' experts in weighing the evidence of obscenity. *Hamling*, 418 U.S. at 101. Therefore, the evidence was sufficient to support the jury's finding that "Shivaree" was obscene.

III.

THE TRIAL COURT'S JURY CHARGE WAS NOT CONSTITUTIONALLY INFIRM BECAUSE IT FAILED TO INQUIRE ABOUT N. W. ENTERPRISES' SPECIFIC INTENT.

A state's decision with respect to criminal procedures is not subject to proscription under the Due Process Clause unless it offends some principle of justice so deeply rooted in the traditions and conscience of our people as to be deemed fundamental. *Patterson v. New York*, 432 U.S. 197, 201-02 (1977). Accordingly, due process prevents conviction of a criminal defendant unless the state proves, beyond a reasonable doubt, every fact necessary to constitute the crime with which he is charged. *In re Winship,* 397 U.S. 358, 364 (1970). Therefore, to conform to the requirements of due process, a jury instruction must not relieve the state of its burden of proof on all elements of the alleged offense. *Sandstrom v. Montana*, 442 U.S. 510 (1979). The jury instruction at N. W. Enterprises' obscenity trial in fact met this due process standard, and, therefore, N. W. Enterprises received all the process it was due.

Under Texas law, a person commits the offense of promoting obscenity if, knowing its contents and character, he promotes or possesses with intent to promote any obscene material. Tex. Penal Code Ann. § 43.23(c)(l) (Vernon Supp. 1988). A "person" includes a corporation. Tex. Penal Code Ann. § 1.07(27) (Vernon 1974). Moreover, the conduct of an agent performed within the scope of his employment and on behalf of a corporation is attributed as a matter of law to the corporation and establishes the criminal responsibility of a corporation for offenses made applicable to

corporations via the Penal Code. Tex. Penal Code Ann. § 7.22(a)(l) (Vernon 1974).

The Texas Legislature made clear its intent to subject corporations to criminal liability under Section 43.23 by making the section applicable to "persons" rather than "individuals." A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. Tex. Penal Code Ann. § 6.03(a) (Vernon 1974). A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result. Tex. Penal Code Ann. § 6.03(b) (Vernon 1974). Thus, in order to convict N. W. Enterprises, the state had to prove only that an agent of N. W. Enterprises, knowing the content and character of "Shivaree," promoted the film or possessed it with intent to promote it.

N. W. Enterprises claims that the trial court's charge denied it its constitutional rights, apparently because the instruction removed the state's burden to prove beyond a reasonable doubt that N. W. Enterprises acted with the requisite intent necessary to commit an offense under Section 43.23. This argument ignores the fact that the Texas Legislature has the supreme authority to define what constitutes a criminal offense in the State of Texas. The record reflects that the trial court instructed the jury that before N. W. Enterprises could be found guilty, it first had to find that an agent of N. W. Enterprises acting within the scope of his employment and on N. W. Enterprises' behalf possessed the necessary *mens rea*

for the commission of an offense under Section 43.21 as defined in the charge. Clearly, this charge did not relieve the state of its burden of proof on N. W. Enterprises' guilt under the applicable law. The Constitution does not require that the trial court instruct the jury to determine whether N. W. Enterprises per se possessed the requisite specific intent for an offense under Section 43.23 because Texas law does not so require. Moreover, it is now well settled that criminal liability for the commission of certain offenses may be imputed to a corporate defendant. *United States v. A & P Trucking Co.*, 358 U.S. 121 (1958); *New York Central & Hudson River R.R. v. United States*, 212 U.S. 481 (1909). Because corporations act only through human agents, the requisite level of intent--here, a "knowing" or "intentional" act--must be imputed to the corporation. N. W. Enterprises' arguments are best addressed to the Texas Legislature.

IV.

THE SEARCH WARRANT PURSUANT TO WHICH "SHIVAREE" WAS SEIZED WAS BASED ON PROBABLE CAUSE TO BELIEVE THE FILM WAS OBSCENE.

The seizure of films on the basis of their content implicates first amendment concerns not raised by other kinds of seizures. *New York v. P. J. Video, Inc.*, ___ U.S. ___, 106 S.Ct. 1610, 1614 (1986). Accordingly, this Court has required that certain special conditions be met before such seizures may be carried out. *Id.* For instance, in *Lee Art Theatre, Inc. v. Virginia*, 392 U.S. 636 (1968), this Court held that a warrant authorizing the seizure of materials presumptively protected by the first amendment may not issue solely on the conclusory allegations of a police officer that the

sought-after materials are obscene, but instead must be supported by affidavits setting forth specific facts in order that the issuing magistrate may "focus searchingly on the question of obscenity." Because the longstanding protections such as that in *Lee Art Theatre* are adequate to ensure that first amendment interests will not be impaired by the issuance and execution of warrants authorizing the seizure of films, this Court has held that an application for a warrant authorizing the seizure of materials presumptively protected by the first amendment should be evaluated under the same standard of probable cause used to review warrant applications generally. *New York v. P. J. Video. Inc.*, ___ U.S. at ___, 106 S.Ct. at 1615.

The general standard of review for whether there is probable cause to support the issuance of a search warrant was established by this Court in *Illinois v. Gates*, 462 U.S. 213 (1983). According to *Gates*, the term "probable cause" means less evidence than that which would justify condemnation. It imports a seizure made under circumstances which warrant suspicion. *Id.* at 235. The task of the issuing magistrate is simply to determine whether, under all the circumstances alleged in the affidavit, there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* at 238. The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.*

Here, it is clear, just as in *New York v. P. J. Video. Inc.*, that the search warrant was supported by probable cause to believe that "Shivaree" was obscene under Texas law. The affidavit[4] describing the contents

[4]The affidavit pursuant to which the search warrant was issued is set forth in Appendix A, attached hereto.

of "Shivaree" adequately established the second element of obscenity under the Texas statute, namely that the film depicted "patently offensive representations" of the various sex acts described in the statute. A review of the affidavit should also satisfy this Court that the issuing magistrate was given more than enough information to conclude that there was a "fair probability" that the film satisfied the first and third elements of the statute, namely that it appealed to a prurient interest in sex and lacked serious literary, artistic, political or scientific value. *See New York v. P. J. Video, Inc.*, ___ U.S. at ___, 106 S.Ct. at 1616. Therefore, N. W. Enterprises' contention that there was not probable cause to justify the issuance of the search warrant and that "Shivaree" was unconstitutionally admitted into evidence is clearly without merit.

CONCLUSION

For these reasons, the state respectfully prays that the petition for writ of certiorari be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

APPENDIX A

THE STATE OF TEXAS)(AFFIDAVIT FOR SEARCH
COUNTY OF HARRIS)(WARRANT

I, S.R. Jett, a peace officer employed by the City of Houston Police Department, Vice Division, do solemnly swear that I have reason to believe and do believe that Dennis Michael Funck, a white male, date of birth 11-22-58, who has given the address of 3115 Norhill, who is 5'10, 175 pounds, short brown hair, thin mustache, and ruddy complexion, does intentionally, knowingly, and unlawfully possess and promote obscene material, to-wit: a motion picture entitled, "Shivaree", while knowing the content and character of said material, and further, that said material was promoted and exhibited at the stadium bookstore, located at 4629 West 34th, Houston, Harris County, Texas. Said location is under the care, custody, and control of Dennis Michael Funck, a white male, date of birth of 11-22-58, who has given the address of 3115 Norhill, who is 5'10, 175 pounds, short brown hair, thin mustaches, and ruddy complexion.

My belief is based on the following facts:

On February 9, 1982, your affiant, while performing his duties as a plainclothes vice officer for the City of Houston Police Department, did enter the above location, which is a one story brick building with a wooden front door. This business is located on the end of a small strip shopping center, with the name of the business posted on a sign in the parking lot. The front of the business has at least two large glass windows, one on each side of the door. After obtaining $5 in change from the clerk, Dennis Michael Funck, who your affiant knows personally, and paying a 75¢ cover charge to this clerk to enter the peepshow area, your

affiant was able to enter booth #12. Your affiant selected this booth from a display card on a display board at the entrance to the peepshow. After inserting 8 quarters into the machine, one at a time, your affiant was able to view an entire motion picture, entitled, "Shivaree", and did observe the following acts and representations which were in said film and were in violation of article 43.21 et seq of the Texas Penal Code. The entirety of said film to include the aforementioned obscene acts are described in detail below:

The film begins showing some horses in a corral, with several cowboys. The film then shows the name of the film as "Shivaree". Several cowboys then go into what looks like a bunk house. One male is laying face down on the bottom of a bunk bed, and this male is wearing long underwear with the buttocks flap down. A male, who shall be attempted to be described as the #1 male, reached down and began rubbing the buttocks of this male with the long underwear, who shall be known as the #2 male. A third male is standing beside the bed masturbating himself. This #2 male then begins to commit oral sodomy on the penis of this #3 male. The #1 male begins oral sodomy on the penis of the #2 male. The #3 male commits oral sodomy on the penis of the #1 male, forming a circle. The #2 male then begins to place his mouth and tongue into the anus of the #3 male.

The #1 male moves around and begins to masturbate himself, as he places his finger into the anus of the #3 male. The #1 male begins anal intercourse with this #3 male. Again the men switch, and each male is committing oral sodomy on the penis of another male. The #2 male then places the #3 male onto his chest, and begins committing oral sodomy on the penis of the #3 male. The #1 male commits oral sodomy on the penis of the #2 male again. This #1 male also begins to

place his mouth and tongue into the anus of the #2 male. The #1 male also begins to commit anal intercourse with the #2 male.

After a few moments of this situation, the #3 male begins to ejaculate semen onto the mouth of the #2 male. The #2 male is masturbating himself and also ejaculates semen onto his own stomach. The #1 male then ejaculates semen onto the #2 male.

A 4th male, who is wearing red long underwear, enters, begins masturbating and soon begins masturbating and ejaculating semen onto the face of the #1 male. The #1 male begins oral sodomy on this #4 male.

Wherefore premises considered, your affiant respectfully requests that a warrant be issued authorizing your affiant, or any other peace officer, to enter the above described premises, being the stadium bookstore, located at 4629 West 34th, Houston, Harris County, Texas, and therein to seize the above described obscene material, to-wit: a motion picture entitled, "Shivaree". Furthermore, your affiant additionally requests that this warrant authorize your affiant, or any other peace officer, to arrest Dennis Michael Funck, a white male, date of birth of 11-22-58, who has given the address of 3115 Norhill, who is 5'10, 175 pounds, short brown hair, thin mustache, and ruddy complexion, and any other person unknown to your affiant who may be found therein and who are engaging in the promotion and exhibition of said film.

[signature]

Sworn to and subscribed before me by [S.R. Jett], on this [10] day of [Feb.], 1982, time: [11:38 A]

[signature]
Magistrate, Harris County, Texas